

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.11060 OF 2007

DATED: 11-06-2007

Between :

Smt. P.S.N. Nacharamma ... Petitioner

And

1. The Revenue Divisional Officer,
Machilipatnam, Krishna District.,
And another. .. Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.11060 OF 2007

ORDER :

The petitioner is the authorized dealer of fair price shop of Akulamannadu Village-I, Guduru Mandal, Krishna District. The said shop was surprised by the Vigilance C.I., Vijayawada and the Deputy Tahsildar, PDS, Machilipatnam on 21-4-2007 and the stocks available were seized under panchanama on the allegation of shortage of 120 litres of Kerosene. On the basis of the said seizure report, confiscation proceedings under Section 6-A of the Essential Commodities Act, 1955 (for short, 'E.C. Act, 1955') were initiated before the Joint Collector, Krishna District. That apart, the Revenue Divisional Officer, Machilipatnam vide proceedings dated 12-5-2007 initiated disciplinary proceedings and the authorization of the petitioner was suspended pending enquiry under Rule 4 of A.P. State Public Distribution System Control Order, 2001 (for short, 'the Control Order of 2001').

The said order of suspension pending enquiry dated 12-5-2007 is under challenge in this writ petition contending that the impugned order is arbitrary, illegal and violative of the fundamental principles of natural justice. It is also contended that since Rule 5 of the Control Order, 2001 does not confer any such power on the 1st respondent to suspend the authorization pending enquiry, the impugned order is without jurisdiction.

Having heard the learned Counsel for the petitioner and having perused the material on record, I do not find any substance in any of the contentions raised by the petitioner.

A perusal of the seizure report dated 21-4-2007 shows that the petitioner had indulged in sale of Kerosene oil and Sugar at higher rates and there was a shortage of 120 litres of Kerosene allotted to the petitioner's shop. Since the said allegations amount to contravention of the Conditions 7, 11 & 13 of the authorization, the 1st respondent - Revenue Divisional Officer – thought it fit to initiate enquiry and pending such enquiry the authorization of the petitioner

was suspended.

It is to be noted that clause-5 of the Control Order of 2001 provides for issuance of authorizations to the fair price shops for the purpose of supply of scheduled commodities in accordance with the provisions of the Control Order. Sub-clause (4) of Clause-5 empowers the Appointing Authority to amend, vary, suspend or cancel the authorisation at any time after making such enquiry and for reasons to be recorded in writing. That apart, Clause-17 of the Control Order, 2001 provides for penalties, in case the fair price shop dealer makes false entries with regard to the supplies made.

It is to be noted that the authorization under Clause-5 of the Control Order, 2001 has to be issued in Form No.2. Condition-7 of the said Authorization mandates that the holder of the authorization shall sell the commodities to the card-holders at the prices prescribed and as per Condition-11 the authorized dealer is bound to comply with any direction given by the appointing authority in regard to purchase or sale or storage of the schedule commodities and the other matters specified thereunder. As per Condition-13 the holder of the authorization shall not contravene the provisions of the Control Order 2001 and he shall not violate any conditions of the authorization.

On a combined reading of the provisions referred to above, it is clear that the authorization issued to the fair price shops is liable to be suspended or cancelled on the ground of contravention of the provisions of the Control Order, 2001 or the conditions of the authorization.

In the case on hand, the allegations made against the petitioner that he had indulged in sale of the essential commodities at higher rates and that a shortage of 120 litres of Kerosene was found during the inspection conducted by the Vigilance C.I., Vijayawada on 21-4-2007, if established would undoubtedly amount to contravention of the provisions of the Control Order, 2001 as well as the Conditions of the authorization. Hence, it is a valid ground for suspension or

cancellation of the authorization under sub-clause (4) of Clause (5) of the Control Order, 2001.

The mere fact that Clause-4 was wrongly quoted in the impugned order of suspension pending enquiry does not vitiate the proceedings since the power exercised by the 1st respondent can be traced to sub-clause (4) of Clause-5 of the Control Order, 2001.

For the aforesaid reasons, I do not find any substance in the contention of the learned Counsel for the petitioner that the impugned order is illegal and without jurisdiction. Since admittedly the impugned order is only an order of suspension pending enquiry as an interim measure, it is always open to the petitioner to participate in the enquiry and make his submissions contradicting the alleged irregularities against him.

Accordingly, the Writ Petition is dismissed leaving it open to the respondents to proceed with the enquiry in accordance with law. No costs.

G. ROHINI, J.

Dt. 11-06-2007
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